

**IN THE COURT OF COMMON PLEAS  
BELMONT COUNTY, OHIO**

**ROBERT E. MURRAY,**  
An Individual,  
47626 Meadowview Drive  
St. Clairsville, OH 43950; and

**MURRAY ENERGY CORPORATION,**  
An Ohio Corporation,  
46226 National Road  
St. Clairsville, OH 43950

Plaintiffs

v.

**PUBLIC CITIZEN, INC.,**  
A District of Columbia corporation,  
c/o agent Joan B. Claybrook  
1600 20th Street NW  
Washington, DC 20009;

**PUBLIC CITIZEN FOUNDATION, INC.,**  
A District of Columbia corporation,  
c/o agent Joan B. Claybrook  
1600 20th Street NW  
Washington, DC 20009;

**KEYMARKET OF OHIO, LLC,**  
An Ohio limited liability company,  
c/o agent CT Corporation System  
1300 E 9th St.  
Cleveland, OH 44114

**JERRY L. HANNAHS,**  
An individual,  
General Manager, WBGI 100.5 FM and WUKL 105.5 FM  
237 Fort Clarke Drive  
Benwood, WV 26031;

CASE NO. 14 CV 235

Judge Frank A. Fregiato

**FIRST AMENDED  
COMPLAINT**

**JURY DEMAND  
ENDORSED HEREIN**

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**CAPSTAR TX LLC,**  
A Texas limited liability company,  
c/o agent Corporation Service Company  
701 Brazos Street, Suite 1050  
Austin, TX 78701;

**CHUCK POET,**  
An individual,  
VP/Market Manager, WWVA 1170 AM and WOVK 98.7 FM  
4354 School House Rd  
Little Hocking, OH 45742;

**JIM ELLIOTT,**  
An individual,  
Program Director, WWVA 1170 AM and WOVK 98.7 FM  
1015 Main Street  
Wheeling, WV 26003;

**CBS RADIO EAST, INC.,**  
A Delaware corporation,  
c/o agent Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808;

**MICHAEL J. YOUNG,**  
An individual,  
Senior Vice President and Pittsburgh Market Manager,  
KDKA 1020 AM  
404 Avonlea Court  
Gibsonia, PA 15044;

**MICHAEL SPACCIAPOLLI,**  
An individual,  
Director of Sales, KDKA 1020 AM  
103 Maplewood Drive  
Wexford, PA 15090; and

**JOHN DOES 1-10;**

Defendants

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Plaintiffs Robert E. Murray and Murray Energy Corporation (together, “Plaintiffs”) state and allege as follows:

### **NATURE OF THE CASE**

1. This is an action for defamation, false light invasion of privacy, and deceptive and unfair trade practices under Ohio law against Defendants Public Citizen, Inc., Public Citizen Foundation, Inc., Keymarket of Ohio, LLC, Capstar TX LLC, CBS Radio East, Inc., and their agents (collectively, “Defendants”) that is based on multiple false and defamatory statements made in radio ads launched on July 28, 2014, heard on radio stations by a wide audience. The false and defamatory statements described below, made by Defendants without any legal privilege, and with knowledge or reckless disregard of their falsity and deceptive character, have disparaged and severely harmed the reputation and business of Plaintiffs, caused great mental anguish and emotional distress for Plaintiff Robert E. Murray and his family members, and have cast Plaintiffs in a false light before the public.

### **PARTIES**

#### **Plaintiffs**

2. Plaintiff Robert E. Murray (“Murray”) is a resident of 47626 Meadowview Drive, St. Clairsville, Belmont County, Ohio 43950, and is the President, Chief Executive Officer, and Chairman of Murray Energy Corporation.

3. Plaintiff Murray Energy Corporation (“Murray Energy”) is a corporation incorporated under the laws of the State of Ohio, with its principal office located at 46226 National Road, St. Clairsville, Belmont County, Ohio 43950.

Defendants

4. Defendant Public Citizen, Inc. is a corporation incorporated under the laws of the District of Columbia, with its principal office located at 1600 20th Street NW, Washington, DC 20009. On information and belief, Public Citizen, Inc. is a non-profit consumer rights advocacy group based in Washington, D.C., with a branch in Austin, Texas.

5. Defendant Public Citizen Foundation, Inc. is a corporation incorporated under the laws of the District of Columbia, with its principal office located at 1600 20th Street NW, Washington, DC 20009. On information and belief, Public Citizen Foundation, Inc. is a non-profit consumer rights advocacy group based in Washington, D.C., with a branch in Austin, Texas.

6. Defendant Keymarket of Ohio, LLC is an Ohio limited liability company, with its principal office located at 56325 High Ridge Rd., Bellaire, Belmont County, Ohio 43906, that is involved in approving advertisements for WBGI-FM, a radio station located near Bellaire, Ohio, transmitting on a frequency of 100.5 MHz. WBGI-FM transmits radio programs and advertisements in Belmont County, Ohio.

7. Defendant Keymarket of Ohio, LLC also approves advertisements for WUKL-FM, a radio station located near Bellaire, Ohio, transmitting on a frequency of 105.5 MHz. WUKL-FM transmits radio programs and advertisements in Belmont County, Ohio.

8. Defendant Jerry Hannahs is an individual residing at 237 Fort Clarke Drive, Benwood, Marshall County, West Virginia 26031. On information and belief, Jerry Hannahs is General Manager of WBGI 100.5 FM and WUKL 105.5 FM.

9. Defendant Capstar TX LLC is a Texas limited liability company, with its principal office located at 2625 S. Memorial Dr., Suite A, Tulsa, Oklahoma 74129, that is involved in approving advertisements for WOVK-FM, a radio station located near Wheeling, WV, transmitting on a frequency of 98.7 MHz. WOVK-FM transmits radio programs and advertisements in Belmont County, Ohio.

10. Defendant Capstar TX LLC also approves advertisements for WWVA-AM, a radio station located near St. Clairsville, Ohio, transmitting on a frequency of 1170 kHz. WWVA-AM transmits radio programs and advertisements in Belmont County, Ohio.

11. Defendant Chuck Poet is an individual residing at 4354 School House Rd., Little Hocking, Washington County, Ohio 45742. On information and belief, Chuck Poet is VP/Market Manager of WWVA 1170 AM and WOVK 98.7 FM.

12. Defendant Jim Elliott is an individual residing West Virginia and employed at 1015 Main Street, Wheeling, West Virginia 26003. On information and belief, Jim Elliott is Program Director of WWVA 1170 AM and WOVK 98.7 FM.

13. Defendant CBS Radio East, Inc. is a Delaware corporation, with its principal office located at 1800 K Street NW, Suite 920, Washington, DC 20006, that is involved in approving advertisements for KDKA-AM, a radio station located at 651 Holiday Drive, Foster Plaza 5, Pittsburgh, PA 15220, transmitting on a frequency of 1020 kHz. KDKA-AM transmits radio programs and advertisements in Belmont County, Ohio.

14. Defendant Michael J. Young is an individual residing at 404 Avonlea Court, Gibsonia, Allegheny County, Pennsylvania 15044. On information and belief, Michael Young is Senior Vice President and Pittsburgh Market Manager of KDKA 1020 AM.



15. Defendant Michael Spacciapoli is an individual residing at 103 Maplewood Drive, Wexford, Allegheny County, Pennsylvania 15090. On information and belief, Michael Spacciapoli is Director of Sales at KDKA 1020 AM.

16. Defendants John Doe are individuals, partnerships, limited liability companies, and corporations whose identities are unknown to Plaintiffs at this time, who caused the Defamatory Statements to be published with knowledge of the falsity of the statements contained therein or with reckless or negligent disregard as to the truth or falsity of said statements.

#### **VENUE**

17. Venue lies in the Court of Common Pleas, Belmont County, Ohio, pursuant to Civ. R. 3(B)(3), (6), (12), and 3(E) because the Defendants conducted activity in Belmont County giving rise to the claim for relief; because all or part of the claim for relief arose in Belmont County; because Murray and Murray Energy reside in Belmont County; and because Belmont County is the proper venue as to any one party other than a nominal party, or as to any one claim for relief.

#### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

18. On July 28, 2014, Defendants Public Citizen, Inc. and Public Citizen Foundation, Inc. (collectively "Public Citizen Defendants") announced they would publish what they described as a "hard-hitting radio ad" about Plaintiffs. ("Public Citizen Launches Radio Ad Criticizing Murray Energy Lawsuit Against Clean Air Safeguards" (*available at* <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=4253>)). A copy of the announcement of the radio ad is attached hereto as **Exhibit A.**)

19. According to Public Citizen Defendants' announcement, "[t]he ad will run July 28 through August 1 on two top country stations and the top classic hits and talk stations that reach [Murray Energy's] headquarters in St. Clairsville, Ohio. The ad also will run on KDKA-AM, the No. 1 rated station in Pittsburgh, Pa." (*See* Exhibit A.)

20. Beginning on July 28, 2014, the ad was played numerous times over the airways and heard by many individuals in Belmont County, Ohio and other locations.

21. As part of that announcement, a transcript of Public Citizen Defendants' radio ad was published. (*See* Exhibit A.) In addition, the announcement included a link to the radio ad (<https://www.youtube.com/watch?v=YdfH-U5SA2s>). (*See* Exhibit A.)

22. The radio ad, announcement, and transcript contain multiple false, disparaging, and defamatory statements regarding Plaintiffs, including, but not limited to:

(i) "[Murray Energy] is working against the interests of mine workers and the public;"

(ii) "Murray Energy sued to stop these protections against dangerous coal dust from going into effect" and thereby increase the incidence of pneumoconiosis;

(iii) "Murray Energy is also suing to block new clean air standards that would protect everyone from air pollution... including children and seniors with asthma;"

(iv) "Murray is using scare tactics;" and

(v) "Murray is ... ignoring the science."

These false, disparaging, and defamatory statements hereinafter are referred to collectively as the "Defamatory Statements" or "False Statements."

23. Before July 28, 2014, Defendant Jerry Hannahs reviewed Public Citizen Defendants' proposed radio ad and, even though he knew that it contained multiple false, disparaging, deceptive, and defamatory statements regarding Plaintiffs, approved Public Citizen Defendants' radio ad to be broadcast from WBGI-FM's and WUKL-FM's transmission facilities located near Bellaire, Ohio, throughout portions of Belmont County, Ohio, and beyond.

24. Beginning on July 28, 2014, Defendant Keymarket of Ohio, LLC broadcast the Defamatory Statements regarding Plaintiffs from WBGI-FM's and WUKL-FM's transmission facilities located near Bellaire, Ohio, throughout portions of Belmont County, Ohio, and beyond. Keymarket of Ohio knew that the radio ad contained multiple false, disparaging, deceptive, and defamatory statements regarding Plaintiffs.

25. Before July 28, 2014, Defendants Chuck Poet and Jim Elliott reviewed Public Citizen Defendants' proposed radio ad and, even though they each knew that it contained multiple false, disparaging, deceptive, and defamatory statements regarding Plaintiffs, approved Public Citizen Defendants' radio ad to be broadcast from WWVA-AM's and WOVK-FM's transmission facilities located near Wheeling, WV, throughout portions of Belmont County, Ohio, and beyond.

26. Beginning on July 28, 2014, Defendant Capstar TX LLC broadcast the Defamatory Statements regarding Plaintiffs from WWVA-AM's and WOVK-FM's transmission facilities located near Wheeling, WV, throughout portions of Belmont County, Ohio, and beyond. Capstar TX LLC knew that the radio ad contained multiple false, disparaging, deceptive, and defamatory statements regarding Plaintiffs.



27. Before July 28, 2014, Defendants Michael Young and Michael Spacciapoli reviewed Public Citizen Defendants' proposed radio ad and, even though they each knew that it contained multiple false, disparaging, and defamatory statements regarding Plaintiffs, approved Public Citizen Defendants' radio ad to be broadcast from KDKA-AM's transmission facility located near Pittsburgh, PA, throughout portions of Belmont County, Ohio, and beyond.

28. Beginning on July 28, 2014, Defendant CBS Radio East, Inc. broadcast the Defamatory Statements regarding Plaintiffs from KDKA-AM's transmission facility located near Pittsburgh, PA, throughout portions of Belmont County, Ohio, and beyond. CBS Radio East, Inc. knew that the radio ad contained multiple false, disparaging, deceptive, and defamatory statements regarding Plaintiffs.

**COUNT I**  
**DEFAMATION**

29. Plaintiffs restate and reallege all other paragraphs of this Complaint as if fully set forth herein.

30. Upon information and belief, Defendants caused the Defamatory Statements to be published with knowledge of the falsity of the statements contained therein or with reckless or negligent disregard as to the truth or falsity of said statements.

31. Upon information and belief, Defendants, acting on their own or through their agents, continue to broadcast or publish the Defamatory Statements and have made the Defamatory Statements available to additional readers throughout the world, including residents of Belmont County and beyond, on Internet websites.

32. The Defamatory Statements are defamatory *per se* in that, on their face, they reflect upon Plaintiffs' reputation and character in a manner that: (1) injured Plaintiffs' reputation and subjects Plaintiffs' to public hatred, ridicule, shame, or disgrace; and (2) adversely affected Plaintiffs' trades or businesses. In the alternative, the Defamatory Statements are defamatory *per quod* in that they are capable of being interpreted as reflecting upon Plaintiffs' reputation or character in a manner that: (1) injured Plaintiffs' reputation or exposes them to public hatred, ridicule, shame, or disgrace; and (2) adversely affected Plaintiffs' trades or businesses.

33. The Defamatory Statements were published and continue to be published with malice and without any lawful privilege or basis.

34. Publication of the Defamatory Statements has caused and will continue to cause Plaintiffs and members of Murray's family to suffer great mental anguish and emotional distress.

35. Publication of the Defamatory Statements will cause Plaintiffs to encounter more difficulty in securing performance surety bonds from lenders to support their businesses and Plaintiffs may have to collateralize them at higher levels.

36. Publication of the Defamatory Statements will cause lenders to be less willing to engage in financing transactions with Plaintiffs, thereby preventing them from gaining access to capital needed to operate their businesses or making it more difficult and expensive for them to obtain such capital.

37. Publication of the Defamatory Statements will cause Plaintiffs to encounter difficulty in participating in discussions with public officials, including regulatory agencies, regarding matters of concern to Plaintiffs' businesses.

38. Publication of the Defamatory Statements will cause Plaintiffs to suffer a loss of business opportunities and loss of potential or existing customers for their businesses.

39. Publication of the Defamatory Statements has caused and will continue to cause damage to Plaintiffs' reputation and good standing in their community and industry.

**COUNT II**  
**FALSE LIGHT INVASION OF PRIVACY**

40. Plaintiffs restate and reallege all other paragraphs of this Complaint as if fully set forth herein.

41. The Defamatory Statements constitute false light invasion of privacy in that the Defamatory Statements have subjected Plaintiffs to unreasonable and highly objectionable publicity by attributing to them characteristics, conduct or beliefs that are false, thereby placing them in a false light before the public.

42. The false light in which Plaintiffs have been placed due to publication of the Defamatory Statements would be highly offensive to a reasonable person.

43. Defendants had knowledge of the falsity of the Defamatory Statements or acted in reckless disregard as to the falsity of the Defamatory Statements and the false light in which Plaintiffs would be placed.

44. Publication of the Defamatory Statements has caused and will continue to cause Plaintiffs and members of Murray's family to suffer great mental anguish and emotional distress.

45. Publication of the Defamatory Statements will cause Plaintiffs to encounter more difficulty in securing performance surety bonds from lenders to support their businesses and Plaintiffs may have to collateralize them at higher levels.

46. Publication of the Defamatory Statements will cause lenders to be less willing to engage in financing transactions with Plaintiffs, thereby preventing them from gaining access to capital needed to operate his businesses or making it more difficult and expensive for him to obtain such capital.

47. Publication of the Defamatory Statements will cause Plaintiffs to encounter difficulty in participating in discussions with public officials, including regulatory agencies, regarding matters of concern to Plaintiffs' businesses.

48. Publication of the Defamatory Statements will cause Plaintiffs to suffer a loss of business opportunities and loss of potential or existing customers for their businesses.

49. Publication of the Defamatory Statements has caused and will continue to cause damage to Plaintiffs' reputation and good standing in their community and industry.

**COUNT III**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES UNDER**  
**OHIO REV. CODE, § 4165.02**

50. Plaintiffs restate and reallege all other paragraphs of this Complaint as if fully set forth herein.

51. Defendants have engaged in deceptive trade practices in violation of Ohio Revised Code § 4165.02 by, in the course of Defendants' business, vocation, or occupation, publishing statements disparaging the goods, services, or business of Plaintiffs by false representations of fact.

52. Defendants knew of the deceptive character of the False Statements when such statements were made publicly.

53. Defendants' conduct has caused injury to Plaintiffs' business and reputation.



54. The conduct of Defendants has been knowing, deliberate and willful and was committed with the intent to deceive the public and disparage and harm Plaintiffs' business. Defendants' campaign to disparage Plaintiffs' reputation in the community at large is also evidenced by the mass publication of the false statements.

55. As a direct and proximate result of Defendants' wrongful activities, Plaintiffs have and continue to suffer damages in an amount to be determined at trial, but in excess of \$25,000.00.

**COUNT IV**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES UNDER**  
**OHIO COMMON LAW**

56. Plaintiffs restate and reallege all other paragraphs of this Complaint as if fully set forth herein.

57. The wrongful conduct of Defendants, as alleged herein, constitutes deceptive trade practices under the common law of Ohio.

58. The False Statements about Plaintiffs were made to influence the public to shun Plaintiffs and their business.

59. Defendants' False Statements were made to cast doubt on the quality of Plaintiffs' reputation, goods, and services.

60. Defendants acted with actual malice through the publication of the False Statements with intent to harm the business and personal interests of Plaintiffs.

61. It was reasonably foreseeable to Defendants that publication of the False Statements would harm the business and personal interests of Plaintiffs.

62. Defendants knew that the False Statements were just that - false.

63. Defendants acted in reckless disregard of the False Statements' truth or falsity.

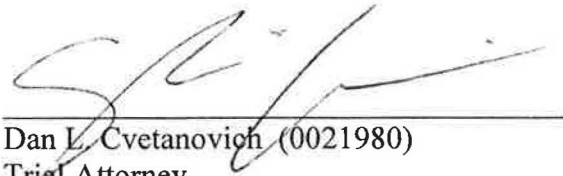
64. As a direct and proximate result of the publication of the False Statements and Defendants' wrongful conduct as herein alleged, Plaintiffs have sustained special damages from the actual loss of sales of coal, loss of business opportunities in procuring sales, and loss of goodwill in the coal and electricity generation industry, and in Robert Murray's personal life, as will be proven at trial.

**WHEREFORE**, Plaintiffs respectfully request, as to Counts I, II, III, and IV:

1. Judgment for general damages in favor of Plaintiffs and against the Defendants in an amount to be determined at trial, but in excess of \$25,000.00.
2. Judgment for special damages in favor of Plaintiffs and against the Defendants in an amount to be determined at trial, but in excess of \$25,000.00.
3. Judgment for punitive damages in favor of Plaintiffs and against the Defendants in an amount to be determined at trial, but in excess of \$25,000.00;
4. An award to Plaintiffs of attorneys' fees and costs of suit; and
5. Such other and further relief as the Court deems just and proper.

**PLAINTIFFS DEMAND A TRIAL BY JURY IN THIS ACTION.**

Respectfully submitted,



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Trial Attorney

Sabrina Haurin (0079321)

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Telefax: (801) 596-2814

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing First Amended Complaint was served upon Defendants via first-class United States mail, postage prepaid, this 2nd day of September 2014 as follows.

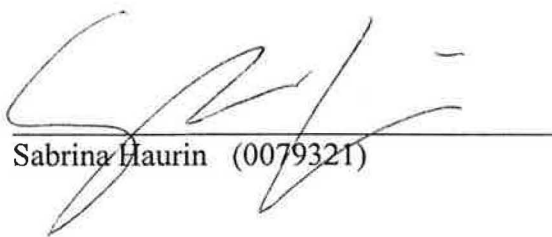
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Michael J. Young, and Michael Spacciapolli

Jerry L. Hannahs,  
An individual,  
General Manager, WBGI 100.5 FM and  
WUKL 105.5 FM  
237 Fort Clarke Drive  
Benwood, West Virginia 26031



Sabrina Haurin (0079321)

#796837v1



# **EXHIBIT A**



# PUBLIC CITIZEN

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July 28, 2014

## Public Citizen Launches Radio Ad Criticizing Murray Energy Lawsuit Against Clean Air Safeguards

*Radio Ad Will Run in Pittsburgh Area and Belmont, Ohio, Market, Home to Murray Energy*

WASHINGTON, D.C. – A hard-hitting radio ad launches today criticizing Murray Energy Corporation's legal challenges to proposed federal clean air standards and protections for mine workers from coal dust. The ad will run July 28 through August 1 on two top country stations and the top classic hits and talk stations that reach the company's headquarters in St. Clairsville, Ohio. The ad also will run on KDKA-AM, the No. 1 rated station in Pittsburgh, Pa.

Murray Energy is a privately owned coal mining company with 3,000 employees and eight underground and surface coal mines in the U.S. It operates in Ohio, Pennsylvania, Kentucky, Illinois, West Virginia and Utah.

In May, Murray Energy sued the U.S. Department of Labor to block new rules designed to protect coal miners from coal dust, which can cause black lung disease. In June, Murray Energy sued to block a proposal by the U.S. Environmental Protection Agency (EPA) to cut carbon pollution from existing power plants.

"It is unconscionable that Murray Energy is trying to block important health and safety protections for workers and the public," said Tyson Slocum, director of Public Citizen's Energy Program. "The EPA's proposal will cut carbon pollution from power plants and clean up our air. We are running this radio ad because we want people to know that this company is working against the interests of mine workers and the public."

On Thursday and Friday (July 31 and August 1), the EPA will hold a public hearing in Pittsburgh, among other cities, on the proposed carbon pollution rules.

The following is a transcript of Public Citizen's radio advertisement.

Announcer: Imagine you're a coal miner, waiting in your doctor's office. Your doctor comes in and shows you a scan of your lung. You have Pneumoconiosis ... Black Lung Disease. Black Lung can harden your lungs ... shorten your breath ... it can even cause cancer and death. And there's no cure. Safety standards can reduce the dangerous coal dust that causes Black Lung. But recently, a coal company called Murray Energy sued to stop these protections against dangerous coal dust from going into effect. Now Murray Energy is also suing to block new clean air standards that would protect everyone from air pollution... including children and seniors with asthma. Murray is using scare tactics and ignoring the science. And that's just wrong. No one wants to worry about the air they breathe. Please visit [www.citizen.org](http://www.citizen.org), sign the petition and speak out now to protect our families' health and our kids' future. Second Announcer: Message brought to you by Public Citizen.

###

### OUR EXPERTS

Learn more about our policy experts.

### Media Contacts

#### Angela Bradbery, Director of Communications

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c. (202) 503-6768

[abradbery@citizen.org](mailto:abradbery@citizen.org), Twitter

#### Barbara Holzer, Broadcast Manager

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#### Karilyn Gower, Press Officer

w. (202) 588-7779

[kgower@citizen.org](mailto:kgower@citizen.org)

### Other Important Links

[Press Release Database](#)

[Citizen Vox blog](#)

[Texas Vox blog](#)

[Consumer Law and Policy blog](#)

[Energy Vox blog](#)

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[Facebook/publiccitizen](https://www.facebook.com/publiccitizen)

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3h

RT @everyvoice: Could balance of the Senate be decided by issues of money in politics? New poll with @DemCorps: [bit.ly/1s7t4Uu](http://bit.ly/1s7t4Uu)

Retweeted by Public Citizen

Expand



**Christine Hines**

[@chrhines](#)

20h

Exec.Order is confirmation by POTUS that access to justice should not be discarded in the

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